

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation Provisions)	CC Docket No. 96-128
Of the Telecommunications Act of 1996)	

**COMMENTS
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May 24, 2002

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I. Summary

In this Notice of Proposed Rulemaking (“NPRM”), the Commission asks parties to comment on various issues concerning the provision of inmate calling services.¹ Specifically, the Commission asks parties to comment on: the role the existing commission system has on rates for inmate calling services, whether local rates for inmate calls are below cost; and if so what measures might increase profitability in light of the existing commission system. The Commission also solicits comments on whether to promote alternatives to existing State contract awarding procedures, and whether to promote billing alternatives to collect billing, such as allowing inmates to establish debit accounts.

With the experience gained from winning bids and then managing over 20 statewide contracts over the last 12 years, WorldCom takes this opportunity to address these issues. Currently, state and local prison authorities typically solicit bids from inmate calling service (ICS) providers to install and maintain secure telephone calling systems within their prison facilities. Contract administrators rank bids on various factors, including the ability of the ICS provider to meet security requirements, rates and fees, and the level of commissions that would be paid into the state general revenue fund. Currently, nearly all state budgets rely on commissions paid by inmate calling service providers into state general revenue fund. State budgeting authorities subsequently allocate funds from general revenues to build and maintain their prison systems. This method of financing prison construction and maintenance has made it possible for states to quickly receive funds needed to finance facilities and staff to accommodate

¹ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking (“NPRM”), CC Docket No. 96-128, Released February 21, 2002.

growing prison populations. The system has also made it possible to provide more extensive, and more secure, telecommunications services.

A few states have taken steps to modify the level of commissions, and lower the caps on rates established in prison telephone contracts. These decisions have directly affected the revenue available to state operating budgets, and in turn affect the states' ability to manage the cost of housing their prison population. Decisions affecting rate levels, billing & collection systems, and commission levels are therefore best left to an appropriate state entity. In some states this entity is the executive branch, which has authorized the prison authority to rank bids regarding service features, rates, and commission payments in a manner that best meets the financing and security needs of the prison system. In other states this entity is the state legislative branch. In other states the utility commission has taken a role in setting rates appropriate for the prison system. States have developed policies which they believe best balance the needs of their prison population, the security of their citizens, and their state budgetary requirements. The Commission must recognize that a number of the proposals suggested in its Notice of Proposed Rulemaking, such as reducing commission levels or moving to a debit collection system, would reduce state revenues and seriously constrain their ability to maintain existing services, including prison services, in the face of declining tax revenues.

All inmate calling equipment and operations are used by local, intrastate toll, and interstate toll calling services. The total amount of revenues earned from each service category therefore goes solely to offset the common costs of providing inmate calling services. Local service is not subsidized by intrastate toll or by interstate toll. The Commission need not adhere to a cost allocation principle that strives to equalize the share of total call volume contributed by each service category to the share of total revenues contributed by each service category. Local,

intrastate toll, and interstate toll all make substantial, and reasonable, contributions to the recovery of common costs. Reasonable contribution is a reasonable standard when the Commission has clear evidence of the absence of cross-subsidization.

The use of debit collection systems in Federal prisons is a minor factor determining the level of ICS rates and fees. ICS providers are able to offer lower rates to Federal prisoners because the population per prison in Federal prisons is substantially larger than in state and local prisons. The same equipment and administrative procedures can be spread among many more calls, allowing lower rates to be offered in competitive bids. The only clear cost that would be eliminated by moving to a debit billing system from a system built upon collect billing would be the need to do line information data base dips to determine whether a collect call is billable. While bad debt and unbillables are significant cost drivers, Federal prisons allow collect calls, so these costs would not be eliminated. In addition, establishing debit billing would require ICS providers to invest in special call handling and rating equipment. Moreover, the additional staff prison authorities would need to hire to manage inmate accounts would significantly add to prison operating expense, expenses not currently included in current appropriation levels. Debit cards also pose significant security risks. Because moving to a debit billing system has such serious budgetary and security implications, states should bear sole responsibility for its decision.

Finally, WorldCom does not use pauses in the conversation to guard against 3-way calling. Neither does WorldCom use total length of call to guard against 3-way calling. WorldCom does disconnect calls when they exceed their permitted length of call. Prison authorities require limits on the length of calls for security purposes. These disconnections are required by contract.

II. States Are Best Positioned To Rank Security, State Revenue Contributions, Prison Revenue Allocations, And Affordability Of Inmate Calling Services

A. Most States Rely on ICS Commission Payments To Offset The State's Cost of Building And Maintaining Prisons

Most state departments of correction award contracts to provide inmate calling services (ICS) by competitive bid. Bidders are evaluated according to various criteria which typically include:

- experience;
- quality and reliability of equipment;
- ability to efficiently meet daily administrative requirements, such as data base management, call processing, call monitoring, fraud investigations, and customer support;
- references from current commercial or governmental accounts;
- expertise of personnel;
- rates and fees charged to inmates; and
- percentage of revenue to be paid in the form of commissions.

Contracts typically limit rates for ICS to be at or below the maximum operator assisted rates for local, intrastate toll, and interstate toll of the relevant dominant carrier – the incumbent local exchange company (ILEC) for intrastate calls and AT&T for interstate calls.

After being awarded a contract, and providing service, ICS providers contribute the contract-determined portion of their revenues into the state's general revenue fund. State budgeting authorities allocate funds from their general revenues to build and maintain their prison systems. Because commission payments are linked to call volume, this method of financing prison construction and maintenance has made it possible for states to quickly receive additional funds to accommodate growing prison populations. The U.S. prison population has increased from a little more than 300,000 in 1980 to nearly 1.5 million in 2000, more than a four-

fold increase.² During this time, the cost of building and administering prisons has nearly doubled, increasing from \$21 billion to \$39 billion in inflation-adjusted dollars.³

B. Commissions Payments Have Permitted Better, And More Secure, Inmate Calling Services

The revenues associated with the system of paying commissions has also made it possible to provide better oversight, review, and tracking of conversations, thereby better serving the security needs of the general population. Prison authorities have been able to build automated, secure calling features into their contract requirements, automatic personal identification number (PIN) validation, automatic checking of allowable phone numbers, automatic identification that the call is from an inmate during the call, and automatic storing of call detail records and reporting of calling patterns. Finally, revenues associated with a system of commission payments have improved the quantity and quality of telecommunications services, thereby better serving the inmate population. For example, after Virginia moved to a commission payment system in 1991, inmates per phone declined from 34 to 18.⁴

² Vince Beiser, How We Got to Two Million, Mother Jones, July 10, 2001, http://www.motherjones.com/prisons/tot_pris.txt.

³ Id., <http://www.motherjones.com/prisons/prispend.txt>. Spending was adjusted to 2000 dollars using the GDP implicit price deflator. See U.S. Department of Commerce, Bureau of Economic Analysis, GDP Implicit Price Deflator, <http://www.bea.doc.gov/bea/dn/nipaweb/TableviewFixed.asp?Selected/Table=144&Firstyear=1980&Lastyear=2000>.

⁴ Commonwealth of Virginia, Members of the Joint Legislative Audit and Review Commission, Review of the Department of Corrections' Inmate Telephone System, ("Virginia Audit"), January 1997, at 6.

C. Policies Designed To Reduce Commissions Should Be Evaluated In Light Of Their Impact On State And Inmate Facility Operating Budgets

The Commission should refrain from acting unilaterally in this area because changes in commission policy will impact the operating budgets of both the states and inmate facilities in nearly every state. Any policy the Commission might promote with the intent of reducing total commissions, such as limiting commission rates, capping total commissions, or capping toll and local charges at lower levels, must recognize that this will reduce the revenues available to states to fund existing programs, including the funding of their prison facilities. In order for them to be willing to reduce commissions, or adopt alternate billing methods such as debit billing, they will need additional sources of revenue. The current declines in state tax revenues experienced by most states makes it unlikely additional revenue sources will be forthcoming.

Some states have, nevertheless, taken actions to reduce the level of commission payments. The Missouri legislature consulted with the state contracting agency to limit commissions to a maximum of \$160,000 a month, and to rank lower ICS rates and fees more highly in the evaluation of competing bids. In California, the Department of General Services consulted with the prison authority to reduce commission payments by approximately \$10 million a year, a 30% reduction. The Georgia Public Service Commission (PSC) chose to reduce commissions by reducing the maximum allowable contract rates for ICS services. Other states have affirmed the policy of financing state and prison budgets through commission payments. The General Assembly of Virginia chose to remove the terms of contracts between telephone companies and state government entities, including prisons, from review by the state utility commission.⁵ The Commission should not impede the ability of state governments to determine

⁵ Chapter 833, *An Act To Amend And Reenact § 56-234 Of The Code Of Virginia, Relating To The Provision Of Service By Telephone Companies To Governmental Entities*. S 156, Approved April 17, 2002

the mix between service rate levels, inmate revenue contributions to prison operating budgets, and security requirements.

D. Commission Fees Are Not Responsible For An Upward Spiral In Collect Call Fees and Rates

The NPRM identifies the payment of commissions to prison authorities as a quasi-rental payment, a payment to a scarce resource. By virtue of its monopoly, the owner of the scarce resource has the ability to extract any profit above normal profits that may occur at the equilibrium level of demand. The Commission characterizes the prison authority as a locational monopoly with the ability to absorb any rate increases and productivity improvements inmate calling service (ICS) providers may implement.⁶ The Commission errs, when it concludes that the desire of ICS providers to win bids by increasing commission payments has resulted in an upward spiral in operator assisted fees and rates.⁷

Prison authorities nearly universally require bidding ICS providers to offer rates at or below the collect call rates of the highest tariffed operator assisted fees and rates of the dominant carrier -- the incumbent local exchange company (ILEC) for local and intrastate toll, and AT&T for interstate toll. These rates and fees are not specific to the inmate market, they apply to the general population. Local and intrastate toll operator assisted rates are generally approved by state regulatory authorities, and fees and rates for interstate toll are determined by competitive market conditions. Therefore, it would generally not be possible for an ICS provider to raise its inmate operator assisted charges as a means of offering higher commissions in the hopes of winning a contract. When WorldCom offers a higher level of commissions than other ICS

⁶ NPRM, &73.

⁷ Id., &73.

providers, it is actually taking a risk that it will be able to find additional efficiencies in order to finance these higher commission levels.

III. Interstate Inmate Calls Do Not Subsidize Local Calls

A. Local Calls Contribute To The Recovery Of Common Costs

In the NPRM, the Commission asks parties to provide cost and revenue information relevant to the provision of ICS, in order to determine whether interstate operator assisted fees and charges subsidize below cost local operator assisted fees and charges.⁸ In particular, the Commission asks parties to identify and quantify the direct, incremental cost of providing local operator assisted inmate calling service. The Commission has noted that the costs of providing the various ICS services, interstate toll, intrastate toll, and local, are primarily common to these services, and have a high fixed cost component.⁹

ICS requires a variety of equipment and tasks unique to the prison environment, including the use of equipment to place automated calls, equipment used to monitor and record ICS calls, the administration of the security features of ICS, the administration of the list of pre-assigned telephone numbers, the repair and maintenance of all associated facilities, reporting and audit requirements imposed by prison contracting authority, on-site support functions, training to inmates and prison administrators, maintaining subcontractor relationships, billing and collection, and the contribution of commissions in accordance with the terms of the contract. None of the equipment mentioned above is solely used by local services. Neither are the various administrative functions, such as billing and collection, inquiries, and overhead incurred solely for local service. Neither are telephone line costs such as payphone access line charges and

⁸ NPRM, &74.

⁹ NRPM, &15.

intrastate access charges caused solely by local service. These services are commonly utilized by local, intrastate and interstate calls. In a service environment where there are no costs directly attributable to local calling, local service revenues by definition make a contribution to the recovery of common costs. Consequently, one may not conclude that local service is subsidized by unreasonably high interstate operator assisted revenues.¹⁰

B. The Commission May Adopt Different Allocation Methods, Depending On Circumstance

The Inmate Calling Service Providers Coalition (ICSPC) recognizes that the caps imposed on fees and rates for local ICS do not create the conditions that meet the economic test for the presence of subsidies from interstate ICS.¹¹ Instead, it argues that the Commission should adopt a different standard for judging the adequacy of local revenue contribution to common cost recovery, namely whether local service revenues make a proportional contribution to the recovery of common costs. If local services fail to make a proportional contribution to the recovery of common costs, ICSPC argues that recipients of interstate calls will end up unfairly supporting (but not subsidizing) the use of payphones by local call recipients.¹²

ICSPC berates the Commission for abandoning, without explanation, the principle of proportionality in the inmate context, while adhering to this same principle when it allocated common costs between coin and non-coin services in its Third Payphone Order.¹³ One relevant consideration regarding which allocation rule the Commission utilizes is whether the allocation

¹⁰ WorldCom also notes that parties that argue that interstate rates subsidize local calling, fail to examine the fees and rates for intrastate inmate calls.

¹¹ ICSP Petition for Reconsideration, Attachment 1, Declaration of Don Wood, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, filed May 7, 2002, &18.

¹² Id., &15.

¹³ Id., &17.

results in a transfer of revenue contribution to the state jurisdiction. The Commission has been reluctant to allocate additional revenue contributions to the state jurisdiction, but has been willing to do so with respect to the interstate jurisdiction. Thus, the Commission used a fully allocated cost methodology, rather than a marginal cost methodology, to set the rates for dial-around calls, because the parties that would bear this higher allocation, the interexchange carriers and their customers, were under the regulatory jurisdiction of the Commission. This may be the reason the Commission has been reluctant to adopt fully allocated costing principles in the inmate context, for it might be concerned that the state jurisdiction would be required to contribute more to the recovery of common ICS costs, an outcome that might severely strain state operating budgets.

IV. Use of Debit Accounts Will Not Reduce State Prison Calling Rates And Fees To Federal Prison Levels

The Commission notes that Federal prisons have lower rates for local, intrastate, and interstate calling than do state prisons. The Commission also notes that Federal prisons rely on debit accounts rather than collect calling to administer payments. Citing data that operator services, collect billing costs, and bad debt account for 30% of the costs of providing ICS, the Commission asks parties to comment on whether the cost of ICS would be significantly reduced if prison authorities were to move to a debit account system.¹⁴ Consideration of the comparative costs of collect and debit billing systems argues against promoting a debit card system.

¹⁴ NPRM, &77.

A. Debit Accounts Have Higher Costs Than Collect Billing

ICS providers and state administrators would not save 30% if state prison authorities were to adopt debit account billing. First, debit account billing would not reduce, and would most likely increase, carrier costs associated with ICS. ICS providers rely on automated equipment to handle calling. This automatic operator equipment performs the following functions:

- Inmate PIN Validation ensures that only inmates with privileges can make calls.
- Allowed Phone Number checks the phone number dialed by the inmate to ensure that only the call recipients who have agreed to receive calls can actually receive calls.
- On-Site Block List Checking ensures that requested call blocking is enforced at the correctional facility.
- System-Wide Block List Checking ensures that requested call blocking is enforced statewide.
- Line Information Database (“LIDB”) Screening ensures that nationwide collect call blocks are enforced.
- Corrections’ “Branding” ensures the call recipient is aware that the call has come from a correctional inmate at the time the call is accepted.
- Correctional “Overlay” ensures that all parties are aware that they are speaking with an inmate while the call is in progress.
- Time Limit Checking imposes a time limit restriction.
- Call Information Capturing captures the phone numbers of all calls made for review by prison staff.
- Call Recording records and allows some monitoring of the phone conversations for investigative use by prison staff.
- Call Storage and Retrieval stores and retrieve call detail records.
- Investigator Reports Generation generates reports that can be used by prison staff to investigate suspicious behavior.
- Disconnecting Calls allows calls to be disconnected if suspicious behavior is detected.

Of these functions, a debit collection system would eliminate the need only for LIDB look-ups, which ensure that the call is billable as a collect call. While debit accounts would eliminate some bad debt, Federal prisons also permit collect calling, so it cannot be the case that debit accounts would eliminate bad debt. Nor would one expect the existence of multiple billing systems, debit and collect, to notably reduce administrative expenses. Debit accounts would impose notable additional costs on ICS providers, for they would be required to purchase additional equipment that would match an inmate's PIN with their debit account, rate the call, and decrement the debit account in real time to verify that calling does not exceed available funds.

Debit account systems would also impose significant new costs on prison authorities. They would become responsible for setting up each debit account, recording the deposit of funds into the account, maintaining fraud control and review of accounts, handling complaints and resolving disputes from inmates regarding the amount of funds in the account from inmates, resolving disputes about the uses of funds,¹⁵ closing accounts when inmates are released or transferred, and refunding any monies remaining in the account. The set up and close down costs can impose especially significant costs when turnover is high. The Commissioner of the Connecticut Department of Corrections recently testified against the use of debit accounts, and cited the experience in Colorado, where it was necessary to hire 10 additional full time staff to manage debit accounts.¹⁶ Debit accounts may also increase the opportunities of more threatening inmates to use scare tactics to gain access to the accounts of other inmates by using

¹⁵ Families have complained that funds deposited into debit accounts to call home are used by inmates for other purposes.

¹⁶ See Attachment 1, Testimony of John J. Armstrong, Commissioner, Department of Correction, Finance Revenue and Bonding Committee Hearing, March 14, 2002.

their debit account number and placing unauthorized calls. Finally, even if debit accounts were to yield reduced rates, they will not necessarily increase demand, since inmate calls will be limited by the amount of money currently deposited in their accounts. Inmates may have limited funds, and their families may have difficulty keeping debit accounts replenished, or may not wish to finance calls made to non-family members. With collect billing the call recipient pays for the calls they receive, but only for the calls they receive.

B. Federal Prisons Have Higher Scale Economies

The Commission correctly notes that fees and rates for calls made from Federal prisons are substantially less than similar calls made from state prisons. The reason has little to do with debit accounts, and more to do with economies of scale. Federal prisons contain many more inmates in a single setting than state and local prisons. This allows the ICS provider to obtain economies of scale and obtain a lower cost structure. This coupled with lower commission fees yields lower rates, not the use of debit billing. The additional costs of, coupled with minimal benefits from debit accounts, do not give much support to the use of debit billing. State and local prison authorities may wish to experiment with this option, but this choice should be left to each prison authority.

V. WorldCom Does Not Use Pauses Or Length Of Call To Guard Against 3-Way Calling

Finally, the Commission asks parties to comment on whether, and the extent to which pause detection or time limitations on the length of call are used to guard against 3-way calling, WorldCom provides 3-way call detection service, but does not use pauses in the conversation to guard against 3-way calling. Neither does WorldCom use total length of call to guard against 3-way calling. WorldCom does disconnect calls when they exceed their permitted length of call.

Prison authorities require limits on the length of calls for security purposes. These disconnections are required by contract. Allowing longer calls might permit inmates to make fewer calls, and incur fewer operator assisted surcharges. But the decision to allow longer calls is within the jurisdiction of the prison authority.

VI. Conclusion

For the reasons discussed above, WorldCom urges the Commission to adopt the positions advocated herein.

Respectfully submitted

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VII. Attachment 1. Testimony of John Armstrong, Connecticut Department Of Correction

Finance Revenue and Bonding Committee

**Public Hearing
March 14, 2002**

Testimony of

**John J. Armstrong, Commissioner
Department of Correction**

H.B. 5672 (Raised) AAC a Pilot Program for a Debit System for Telephone Calls from a Correctional Facility.

Good morning Senator Looney, Representative McDonald and all of the honorable members of the Finance Revenue and Bonding Committee, I am pleased to have the opportunity to discuss House Bill 5672, An act Concerning a Pilot Program for a Debit System for Telephone Calls from a Correctional Facility.

This bill seeks to implement a pilot program at the York Correctional Facility in Niantie that will provide an option for inmates to utilize a debit service, in lieu of collect calls. The bill proposal will also require implementation of this pilot program to be in use within 90 days upon passage.

In consultation with staff responsible for monitoring and maintaining telephone operations and communication for inmates, I have concerns that the implementation of this pilot program may result in increased operating costs, as well as security concerns.

To begin, I must affirmatively state that telephone calls from correctional facilities are a privilege, not a right. The extension of this privilege, in the past, permitted the reach of offenders into the community to run gangs, perpetrate crimes, intimidate witnesses and re-victimize victims. The steps we have taken to develop the existing regulations and the telephone security platform have been essential toward reducing criminal use of the system has resulted in effective prosecution where crimes have occurred. As well, this program has permitted greater access to telephone privileges by more inmates. Previously, the access was staff intensive to police usage to prevent inmate control by intimidation, extortion and other factors of inmate and gang culture.

We are now debating legislation on how to best facilitate a privilege. I must state from the onset that I will not support any concept that does not factor public safety, staff safety, and facility security as a priority over inmate privileges.

To implement the proposed pilot program, the inmate or a person on their visiting list would need to be able to send or transfer funds from the inmates trust fund for deposit into a sub-account on the system designated for phone use. A manual interface between the Inmate Telephone System and the Inmate Trust Fund System is necessary to track accounts receivable and debits to each account. When an inmate places a call, the manual interface will allow the provider to verify fund availability and then deduct applicable funds for each call.

Debit calling requires the same controls, recording, and monitoring functions as a collect call system. The Department of Correction dedicates numerous staff to ensure call monitoring remains a vital component of ensuring our commitment to public safety initiatives. The implementation of a debit calling pilot program will require additional resources that will be necessary to ensure that this service is accomplished and managed appropriately. Staffing resources beyond our current compliment are necessary to administer a debit calling system. The number of staff required will be determined based on inmate participation in the program.

For example, the Colorado Department of Correction utilizes a similar system to manage a department of 16,000 inmates. To manage the system, ten administrators are required to ensure that transactions are appropriately processed. Additional resources are also necessary to address complaints and grievances with regard to billing errors and fund allocation. For instance, Colorado DOC has encountered complaints from families regarding discrepancies stemming from the manner in which inmates choose to utilize funds once they are deposited into their account, whereas inmates choose to contact alternate acquaintances or purchase commissary in lieu of phone privileges. The Department of Correction is responsible for fund management and system administration of the Inmate Trust Fund. This fund manages all transactions from inmates who receive monies both internally by working in the facility or through external sources, including family members and approved individuals on their visiting list. Because we manage the fund, the department would need to intercede on billing problems or account errors, complaints by depositors regarding inmate use of funds and an increase in transactions as a result of the phone debits.

More importantly, I believe that a debit system may create an increase in extortion, theft and bartering within the population. As you are well aware, these activities lead to an increase of incidents and assault, fighting and violence. Inmates will be more prone to find innovative ways of gaining access to the accounts of other inmates by using their debit account number and placing unauthorized calls. The potential also exists for inmates who are deemed more threatening or physically domineering over others to use scare tactics on other inmates to monopolize phone usage within the facility. It is impossible to forecast all of the potential issues that may arise from this proposal to create an unsafe atmosphere, and destabilize our facility climate.

I do not foresee any cost benefit to this pilot program as it relates to reducing the cost of telephone communications between inmates and the family, friends or acquaintances of those on the approved calling list. In fact, the fiscal impacts of this proposal are so intrusive upon the law-abiding taxpayers of our State that I am inclined to oppose this proposal.

The ninety-day implementation requirement as offered in this proposal is both unreasonable and impractical. The department will need to put into action major changes in regulations, policy and procedure, additional staffing and will also require significant technical support upgrades to implement this program. Therefore, I foresee that it will take at least 12-18 months to properly deploy a program of this magnitude, providing all requirements, including funding and position approval are expedited.

Lastly, I can empathize with the families who have loved ones remanded to the care and custody of the Department of Correction and realize the financial burden that phone calls from prison have on them. I must again reaffirm that phone access is a privilege that we provide to offenders, it is not a mandate. When that privilege becomes an undue burden upon security and resources particularly without taking into consideration noted safety concerns, I must stand in opposition to the concept. I believe it would be more appropriate to implement legislation that will allow for the study of potential options that may exist and will consider the concerns that I have presented before you today.

Thank you for the opportunity to speak before you today. I would be pleased to respond to your questions.

Statement of Verification

I have read the foregoing, and to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on May 24, 2002

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